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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,847	12/09/2003	Lewis S. Cohen	V0058.70028US00	4400

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EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/731,847	Applicant(s) COHEN ET AL.	
	Examiner Matthew D. Matzek	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>all</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. Claims 1-23 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-23 of copending Application No. 10/737,522. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, and 9 are rejected under 35 U.S.C. 102(b) as anticipated by Daroux (US Patent 6,207,271).

3. Daroux teaches a flexible laminate for packaging comprising a first metallic foil layer, a second metallic foil layer, an intermediate separation layer disposed between the first and second metallic foil layers, and a first self-sealing polymer on the outer surface of the two metallic foil layers (Abstract). The separation layer (central layer) be formed of fabric (woven or nonwoven), scrim, paper, a polymer film and adhesive, another metallic foil, or combinations thereof such as a central fabric layer surrounded by two polymer extrusion layers (col. 4, lines 11-18). The laminate may comprise additional metallic foils and separation layers (col. 3, lines 29-34). The first and second metallic foil layers preferably comprise aluminum foil (col. 4, line 2) with a thickness of less than

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100 μ m, more preferably having a thickness of between 5-50 μ m (col. 4, line 8). The separation layer (herein relied upon to read on the claimed "puncture resistant material") provides the function of creating space between the metallic foil layers and providing the laminate with tensile strength, penetration resistance, and stiffness (col. 3, lines 50-54).

4. The separation layer preferably comprises a polymeric sheet, most preferably a Mylar sheet (col. 4, line 46), with a thickness of 2-100 μ m, most preferably 3-18 μ m (col. 4, lines 34-36). The Examiner notes that Mylar is a polyester material. The separation layer may be attached to the metallic foil layers with additional layers of thin adhesive (col. 4, line 25).

5. The applied patent states that the self-sealing (puncture-resistant) layer of the flexible laminate be polymeric and comprise a pressure- or heat- sensitive adhesive thereby encompassing polyester films (col. 4, line 51). The self-sealing layer may be mono, co-extruded or laminated (col. 4, lines 50-56).

6. The applied patent states that the central (separation) layer of the flexible laminate be polymeric and is bonded to the metallic layers by thin layers (films) of adhesive (col. 4, lines 40-45). This qualification encompasses polyethylene as a viable component for the central layer. The adhesive used to bond said polymeric layer and said metallic layers may be polyethylene (claim 13). This qualification encompasses low-density polyethylene. The self-sealing layer may be mono, co-extruded or laminated (col. 4, lines 50-56).

7. The applied patent discloses the use of fabrics for use in the central layer (col. 4, lines 10-13). Claim 6 is rejected as non-woven fiberglass is a fabric.

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8. The applied patent states that the flexible laminate is “less than about 152.4 μ m” rejecting the claimed range of “no greater than about 350 microns” in Applicant’s claim 9 (col. 5, lines 10-12).

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 8 is rejected under 35 U.S.C. 102(b) as anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Daroux.

10. The rigidity and cutability of said laminate are properties of the laminate. While Daroux is silent to these particular properties it is reasonable to assume that the material of Daroux inherently possesses these properties due to the fact that the same materials, thicknesses, etc. are found both in Daroux and in the instant claims, or in the alternative, it would have been obvious to have selected the materials, thicknesses, etc. in Daroux in order to arrive at a material having the desired rigidity, ability to cut, etc.

Claim Rejections - 35 USC § 103

11. Claims 10-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daroux.

12. Daroux discloses that the laminate may comprise additional metallic foils and separation layers, but does not explicitly disclose embodiments with more than two metallic foil layers. However, Daroux teaches that multiple metallic foil layers reduce the likelihood of cracks and defects from aligning with each other and that it would be obvious to use two or more layers of metal foil to improve the laminate's hermeticity (col. 5, lines 48-65 and col. 6, lines 1-5). Furthermore, additional layers improve the laminate's strength (col. 5, lines 62-65). An intermediate layer is used between the foil layers to prevent the alignment of cracks and defects in the foil layers (col. 3, lines 40-45). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add additional metallic foil layers and separation layers to the laminate taught in Daroux motivated by the desire to improve the laminate's hermeticity and strength. This assertion reads on claims 10-23. Figure 3D of the applied patent shows a material comprising an outer layer of foil without a reinforcing outer polymer layer to cover the foil layer (col. 5, lines 39-45).

13. The thickness of the metallic foil layers is preferably between 5 and 50 microns, and most preferably between 5 and 12 microns (col. 4, lines 5-10). With regards to claims 11, 13, 16, and 19 the Examiner takes the position that "between 5-50 microns" teaches with sufficient specificity the claimed range of "approximately 9 microns" and "approximately 25 microns". The self-sealing polymeric layer (puncture resistant polymer film) has a thickness of less than about 76 μm (col. 5, lines 3-4). With regards

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to claims 11, 13, 17, and 19 the Examiner takes the position that “less than about 76 μ m” teaches with sufficient specificity the claimed range of “approximately 23 microns”. The overall thickness of the said flexible laminate is preferably less than 152.4 μ m, preferably within a range of about 60 μ m and about 127.0 μ m (col. 5, lines 10-15).

14. The applied patent states that the self-sealing layer may be polymeric and comprise a pressure- or heat- sensitive (col. 4, line 51).

15. Daroux is silent as to the presence or lack thereof of a pattern on the central fabric layer. As Daroux discloses a woven fabric, the fabric would necessarily have a pattern, in that the arrangement of the warp and weft constitutes a pattern. In the alternative, it would have been obvious to one skilled in the art at the time of the invention to impart a pattern on the central fabric layer. The skilled artisan would have been motivated by the pattern’s ability to increase the surface area available for the administration of adhesive thereby increasing the layer’s adhesion with the metallic foil layers.

16. The separation layer may be attached to the metallic foil layers with additional layers of thin adhesive (col. 4, line 25).

17. With regard to the limitation in Applicant claim 20 that the “weather seal being manually bendable into a desired configuration, and said weather seal retaining the desired configuration once a manual force has been removed” the Examiner takes the position that the polymer (structural) is “manually bendable into a desired configuration ” because Daroux teaches that the laminate is desirably "flexible" (col. 6, line 6). The Examiner takes the position that the limitation set forth in Applicant claim 20 of “retaining the desired configuration once a manual force has been removed” is inherent to

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said article from prior art because it meets the physical and chemical limitations of the body of the claim.

18. The puncture resistance and tear strength of the invention of the applied patent have not been included. It is reasonable, however to presume that since the prior art meets the physical and chemical limitation of the body of the claim a puncture strength of at least 49 kilograms as measured in accordance with ASTM D-1000 and a tear strength of at least 7.60 kilograms as measured in accordance with ASTM D-624 are properties inherent to said applied patent thus providing the said invention the desired physical properties.

19. The applied patent states that the flexible laminate be "less than about 152.4 μ m" rejecting the claimed range of "no greater than about 350 microns" in Applicant's claim 23 (col. 5, lines 10-12).

Conclusion

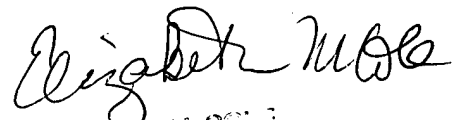
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm


ELIZABETH M. COLE
PRIMARY EXAMINER